IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 388 of 1999
WITH
CRIMINAL REVISION APPLICATION NO.390 of 1999

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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S S THAKKER

Versus

M C BHAVSAR

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Appearance:
MR MN MEHTA for Petitioner
MR DR BHATT for Respondent No. 1
MR ND GOHIL, APP for Respondent No. 2

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 27/04/2000

ORAL JUDGEMENT

1. These are revision applications under section 397 read with section 401 of the Code of Criminal procedure at the instance of the original complainant who had filed a complaint against the respondent-accused under section

138 of the Negotiable Instruments Act.

2. During the course of trial, by application Exh.2 the accused prayed for discharge from the said case on various grounds. The learned Magistrate, after considering the facts and evidentiary material on record, granted the application and discharged the accused. Although the grounds i.e. the reasons for granting the order of discharge given by the learned Magistrate are not as clear as they could have been, it is possible to cull out the sum and substance behind the order of discharge, inasmuch as the same is a speaking order.

3. There is no controversy on the fact that the statutory notice as required under section 138 of the Negotiable Instruments Act was issued by the complainant on 12th February 1997. It is stated that the same was issued by registered post AD. One may assume that it would reach its destination, in this case within the same city of Ahmedabad, within two or three days. For the moment we may assume that it reached the addressee on 15th February 1997 or thereabout.

4. A plain reading of section 142, subsection (b) indicates that the court cannot take cognizance of the complaint unless the same is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138. Proviso (c) contemplates that the cause of action would accrue where the drawer of the cheque fails to make payment of the amount to the payee within 15 days of the receipt of the notice. Thus, 15 days are required to be given to the drawer to make payment, on the expiry of which the cause of action would accrue. The complaint must then be filed within 30 days thereafter. In the instant case a complaint is filed in the month of May 1997, the exact date whereof could not be furnished by learned counsel for the petitioner. However, learned counsel submitted that it is on record that there was delay in filing the complaint because the complainant wanted to be certain that the notice has been served upon the drawer. Since the complainant did not receive back the AD slip from the postal department bearing the signature of the drawer of the cheque, the complainant made inquiries with the postal Department, and after being satisfied that the notice had been served on the drawer he waited for 15 days for the drawer to comply and on the expiry of 15 days he then filed the complaint. Obviously this approach and explanation of the complainant would not serve to extend the period of limitation specifically contemplated by section 142 of the said Act. The said provision specifically

contemplates that the complaint is required to be filed within a month of the accrual of the cause of action, and the cause of action would accrue on the expiry of 15 days from the service of the notice. Obviously, therefore, the knowledge or satisfaction of the complainant that the notice as required by section 138 is served upon the drawer has no direct nexus with the statutory provisions pertaining to the limitation, and would not serve to extend the limitation.

5. The trial court was, therefore, justified in passing the order of discharge in favour of the accused. These revisions are, therefore, without any substance and the same are dismissed. Rule is discharged accordingly.

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